Ponderosa Granite Company *and* Granite Cutters Division, Local 221, Tile, Marble, Terrazzo, Finishers and Shopmen, International Union. Cases 10-CA-17407 and 10-CA-17604

17 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 30 November 1982 Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge credited the testimony of discriminatee Eaves only to the extent it conformed to the testimony of other witnesses or to other credited evidence. In assessing Eaves' credibility the Administrative Law Judge relied on the testimony of Rampey, an employee of a building supply store, that Eaves had written a bad check for supplies and then returned the supplies for cash, and the testimony of a deputy sheriff that eight bad check warrants had been issued against Eaves as demonstrating that Eaves' reputation for truthfulness was "not good." The General Counsel excepts to the receipt of this evidence and to the Administrative Law Judge's reliance on it. The General Counsel argues, *inter alia*, that the Administrative Law Judge improperly admitted Rampey's testimony under Rule 405(b) of the Federal Rules of Evidence since Eaves' character was not an essential element of a charge, claim, or defense. The General Counsel further contends that the deputy sheriff's testimony was inadmissible under Rule 608(b) of the Federal Rules of Evidence since the deputy sheriff's testimony, which purported to prove certain instances of conduct, was relied on to attack credibility, and was not evidence of a conviction of crime which is admissible under Rule 609 of the Federal Rules of Evidence. We find merit in the General Counsel's contentions. We further find that even if the deputy sheriff's testimony were to be considered solely as evidence contradicting Eaves' testimony on the number of bad check warrants issued against him, it should have been excluded as involving merely a collateral matter. Finally, we note that the Administrative Law Judge's erroneous evidence rulings did not affect the outcome of his Decision.

In his first Conclusion, the Administrative Law Judge erroneously wrote: "Although there remains a question as to Respondent's obligation to bargain through the EGA, it is not undisputed that Respondent's bargaining unit employees were represented by the Union, "whereas the sentence should have read "Although there remains a question as to Respondent's obligation to bargain through the EGA, it is undisputed that Respondent's bargaining unit employees were represented by the Union." This apparently inadvertent error does not affect the result.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Ponderosa Granite Company, Elberton, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard in Elberton, Georgia, on July 9 and 12 and August 31, 1982. The complaints, which issued on November 3 and December 10, 1981, and are predicated on charges filed on September 8 and November 2, 1981, allege that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act, by terminating employees Reuben Smith, Billy Carey, and James Eaves, and Section 8(a)(1) of the Act in four separate instances involving threats and interrogation.

Upon the entire record and from my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I hereby make the following:

FINDINGS OF FACT

I. THE EVIDENCE[1]

Prior to August 1981, Respondent along with other employer members of the Elberton, Georgia, Granite Association, was party to a collective-bargaining agreement with the Charging Party (the Union). In large measure the instant controversy arose as a byproduct of the Union's efforts to renegotiate the collective-bargaining agreement which was set to expire in August 1981. I have outlined the following events in chronological order.

A. *Pre 10(b) Activity*

Former employee Douglas Reynolds testified that, during August 1980, Respondent's president, Joe Scarborough, told Reynolds that he would show Reynolds how to get rid of the Union, and he was not going to sign the contract in 1981.[2] This conversation, which is

[1] The commerce facts and conclusions are not at issue. The complaint alleges, the answer admits, and I find that Respondent, a Georgia corporation with facilities located in Elberton, Georgia, where it is engaged in the manufacture of granite monuments, is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. The complaint also alleges and Respondent admits during the hearing herein that the Charging Party (the Union) is a labor organization within the meaning of Sec. 2(5) of the Act.

[2] I credit Reynolds' version of the August 1980 conversation. I was generally impressed with Reynolds' demeanor. On the other hand, I was not impressed with Scarborough's demeanor. Scarborough's testimony as to the motive behind his opposition to the Elberton Granite Association's

Continued

outside the 10(b) period, does not constitute evidence of a violation. However, it does tend to show that Respondent wanted to rid itself of the Union.

In early 1981[3] Joe Scarborough asked Douglas Reynolds which employee had called Union Business Agent Albert Norman about the employees "getting knocked off early the day before." Scarborough told Reynolds, "I want to know who the son-of-a-bitch is, because I want to fire him right now." Again, as above, this evidence, which I credit, tends to establish union animus. However, due to the confusion in dates and especially in consideration of the fact that participant Robert Taylor left Respondent's employ and Albert Norman ceased being business agent, in February 1981, I cannot find that this conversation occurred within the 10(b) period. The 6-month 10(b) period proscribes any finding of an unfair labor practice in this case which occurred before March 8, 1981.

B. *April 1981*

Union Business Agent Manuel Ortiz testified that the Union notified the Elberton Granite Association of its intention to negotiate a new contract on April 30, 1981. Subsequently, Members of the Association notified the Union that the Union's notice was untimely. Eventually the Association, but not including Respondent, elected to honor the Union's request and a new contract was negotiated.

C. *May 1981*

In early May, Ortiz was contacted by Joe Scarborough.[4] Scarborough told Ortiz that he could not go along with what he knew the Granite Association was going to give. Scarborough talked to Ortiz about a ceiling for employees' hourly wages. Scarborough indicated that he did not want to negotiate with the others in the Granite Association.

Subsequent to meeting with Ortiz, Scarborough met with his bargaining unit employees. Scarborough placed the meeting as occurring shortly after May 5, 1981. According to Scarborough, when the Elberton Granite Association originally elected to treat the Union's bargaining request as untimely, the word got out that all the association members' employees would "quit for a week or two." Scarborough met with Ortiz on the day following the meeting at the Granite Association (see above), and later that day called the meeting of his employees.

Scarborough directed Foreman Talmadge Bone to assemble the meeting. According to Bone's testimony, which I credit,[5] Scarborough told him to call in "all the union members." Bone recalled that Scarborough asked the employees "how the contract was coming along," "what they were asking for, and how much raise they was [sic] wanting." Scarborough told the employees that "he didn't want to go with the EGA (Elberton Granite Association), but, he would go in on his own, because it cost him too much money to go with EGA."[6]

Conclusion

The above-credited evidence does reveal that Scarborough dealt directly with and interrogated his employees concerning their bargaining position. Although there remains a question as to Respondent's obligation to bargain through the EGA, it is not undisputed that Respondent's bargaining unit employees were represented by the Union. Therefore it was improper for Respondent to deal directly with and interrogate the employees about their collective-bargaining positions. (See *Doral Hotel*, 240 NLRB 1112 (1979); *North Kingstown Nursing Care Center*, 244 NLRB 54 (1979); *McCormick Electrical Construction Co.*, 240 NLRB 418 (1979); *Cartwright Hardware Co.*, 229 NLRB 781 (1977); *C. K. Smith & Co.*, 227 NLRB 1061 (1977)).

II. JULY 1981

A. *Discharge of Eaves*

The next event of moment to these proceedings involved the discharge of employee James Eaves. That particular incident, unlike other events mentioned herein, did not directly involve the Union's efforts to negotiate a new contract. However, the Eaves incident did involve the existing contract.

James Eaves worked only a short time for Respondent, from May 18, 1981, to July 3, 1981. Although Eaves' notice of separation from Respondent lists several reasons why he was discharged, the record[7] reveals the occurrence of one precipitating factor.

---

original decision to refuse to enter into negotiations for a new contract on the ground that the Union's April 1981 demand was untimely does not square with other evidence regarding his conversations with union representatives and with employees. Scarborough contended that he refused to negotiate through the Granite Association because of the association's preliminary decision to treat the Union's negotiating request as untimely. However, substantial evidence indicates that Scarborough's efforts to negotiate on his own outside the Granite Association were motivated out of concern that the wage rates negotiated by the association would be too high. Additionally, evidence shows that Scarborough was also motivated by his union animus. Moreover, although Scarborough contended that he was prepared to execute a contract with the Union in midsummer 1981, the evidence is unrebutted that he had not signed the contract at the conclusion of this hearing. Therefore, at least to the extent his testimony conflicts with credited evidence, I shall discredit Scarborough.

[3] Although Reynolds places the conversation in May 1981, unrebutted evidence shows that Reynolds last worked for Respondent on April 28, 1981, and that Foreman Robert Taylor, who, according to Reynolds was present during the conversation, last worked for Respondent on February 25, 1981. Also, Albert Norman, who was mentioned in the conversation, was succeeded by Business Agent Ortiz in February 1981. Therefore, I find that Reynolds was mistaken as to the date of the conversation.

[4] I do not credit Scarborough's version of his conversation with Ortiz. I credit Ortiz who demonstrated good demeanor and whose testimony was more consistent with the record as a whole.

[5] Bone's demeanor was that of a candid witness. He appeared to respond openly to both the General Counsel and Respondent.

[6] Bone's testimony was, in substantial measure, corroborated by testimony regarding this meeting with Scarborough, by Reuben Smith and Billy Carey.

[7] In assessing the evidence regarding Eaves' discharge, I have credited the testimony of Eaves only to the extent it conforms to testimony from witnesses of Respondent or to other credited evidence. I was impressed by evidence regarding several bad checks written by Eaves, demonstrating that Eaves' reputation for truthfulness is not good. In that regard, I have decided to change an earlier ruling I made at the hearing regarding testimony from Milton Rampey of Townhouse Building Supplies. Rampey testified to an incident wherein James Eaves improperly exchanged materials he had purchased with a check, for cash, even though

Continued

On July 3, 1981, Eaves complained to Scarborough that his vacation check from Respondent was too small. According to Eaves, he was entitled to 40 hours' vacation rather than the 10 hours actually paid him by Respondent.

Joe Scarborough admitted that Eaves approached him at the company picnic on July 3, and complained about his vacation pay. Eaves argued that the collective-bargaining agreement provided that Respondent must pay him for his total vacation entitlement even though he had worked for another Elberton Granite Association employer for most of the entitlement period. According to Scarborough, after a heated argument, Eaves threatened to quit unless Respondent paid him for an additional 30 hours' vacation time. Scarborough testified that he fired Eaves at that point.

According to Eaves, following his argument with Scarborough at the picnic, he left and went to see Business Agent Ortiz. Eaves testified that Ortiz phoned Scarborough. Scarborough admitted receiving a call from Ortiz but, according to Scarborough, the call came after he had discharged Eaves.

Manuel Ortiz testified in corroboration of James Eaves regarding his July 3 telephone call to Scarborough. Scarborough argued with Ortiz that Eaves was not entitled to additional vacation pay under the contract. Scarborough became angry and told Ortiz to never "set foot on his property again."

On July 8, 1981, James Eaves received written notice of his discharge.

Conclusion

In Eaves' separation notice and in its defense herein, Respondent listed several reasons in addition to Eaves' vacation pay complaint, as grounds for Eaves' termination. The record conclusively shows that, while many or all those other matters may have occurred, it was the vacation pay complaint alone which caused Eaves' termination.

The other reasons included "false information on contract sheets." In that regard, Joe Scarborough testified that James Eaves claimed pay for work performed by other employees. According to Scarborough, Eaves claimed on contract sheets that he had cut monuments which had been cut by others. However, the evidence was clear that the occurrences regarding the erroneous contract sheets surfaced and were discovered by Scarborough, several weeks before Eaves' discharge. Eaves was not disciplined for those occurrences and Scarborough did not threaten to either discharge or otherwise discipline Eaves for the infractions.[8]

The separation notice also lists "talks to other employees keeping them from their jobs"; "also is always causing confusion and disturbance upon other workers"; "Mr. Eaves is always complaining about his working conditions"; "Mr. Eaves is always late for work." Again, the record demonstrated that Respondent did not first learn of any of those matters at a time proximate to Eaves' discharge. Moreover, Eaves was never disciplined nor threatened with discipline for the alleged infractions. As to being late for work, the record, including testimony by Joe Scarborough, revealed that several stone cutters were frequently late for work. Aside from occasional lectures to those employees about the importance of being on time, Scarborough did not discipline anyone for being late.

Also listed on the separation notice was "Mr. Eaves has financial problems such as garnishments"; "bill collectors are always calling Mr. Eaves off the job"; and "[Eaves] is also self employed with (Elberton Mini Morts) [sic]."While the record did indicate that Eaves had financial problems, Respondent learned of those difficulties several weeks before Eaves' termination and Eaves was never disciplined nor threatened with a discipline because of those problems. Scarborough testified that he caught Eaves taking small pieces of granite from Respondent's premises for use in his own "mini morts" business. However, Eaves was not disciplined for that infraction. Scarborough admittedly told Eaves not to make a habit of taking the small stones.

I find the evidence is conclusive that the sole cause of Eaves' discharge was his complaint about his vacation pay. The other bases asserted in the separation notice were neither proximate to the July 3 discharge nor did the record show that Respondent ever considered discharging Eaves for those alleged offenses. Moreover, the testimony of Joe Scarborough clearly revealed that he discharged Eaves immediately after, and as a direct result of, Eaves' complaint that Respondent was not satisfying its collective-bargaining obligation as to the amount of vacation pay due Eaves. The record amply shows that Eaves' complaint fell within the scope of the collective-bargaining agreement. That agreement, in the last sentence of article 19, "Vacations," section E, states:

> Employees leaving the company shall receive vacation pay from the employer for whom he is working when vacation pay is payable, based on his service with that Employer and his immediate previous Employer, provided such previous Employer is also covered by an agreement by the Union.

Whether Eaves was correct in his argument regarding vacation pay is not determinative of the issue before me. I do find that Eaves' complaint appears reasonable under the contract and the complaint appears to fall squarely within the ambit of the above-cited provision.

The law is clear that employees are protected under the Act from discipline because they advance grievances or complaints pursuant to the terms of an outstanding collective-bargaining agreement. The Board has long held that employees must be protected from discipline because of complaints under the contract. See *Interboro Contractors*, 157 NLRB 1295 (1966); *W. Carter Maxwell*, 241 NLRB 264 (1979); *G & M Underground Contracting Co.*, 239 NLRB 78 (1978); *Don Brentner Trucking Co.*, 232 NLRB 428 (1977). In view of my above determination that Eaves was discharged because he advanced a

---

Eaves' personal check for the materials was not covered by sufficient funds. The personal check later bounced. On reconsideration, I feel that evidence is admissible under Rule 405(b) of Federal Rules of Evidence and I shall consider Rampey's testimony.

[8] Scarborough simply cautioned Eaves that if Eaves could not keep his contract sheets straight he would be placed on hourly pay.

complaint under the collective-bargaining agreement on July 3, 1981, I find that he was discharged in violation of Section 8(a)(1) and (3).

B. *The Second Meeting*

Joe Scarborough called a second employee meeting because of more rumors of a strike. According to Scarborough, that meeting was called on the last Thursday in July 1981 in Respondent's facility near the Coke machine.

Foreman Talmadge Bone testified that Scarborough instructed him to get "all the union members." However, because of machine noise, the plant was shut down and all employees, both bargaining unit and otherwise, attended the meeting. Bone recalled Scarborough telling the employees:

> Joe said he heard that [some] of them was going to strike [sic], and he said, if you're going to strike, strike now, if you don't, you can leave now; but nobody didn't leave [sic], everybody went back to work.

Later in his testimony Bone recalled that Scarborough told the employees that he would negotiate with the Union, but not with the Elberton Granite Association. Bone left the meeting on one occasion to get a drink of water.

Reuben Smith was also present at the meeting near the Coke machine. Smith recalls Scarborough mentioning that the Union had written Respondent that Respondent could not take out pension funds on employees Robert Andrews and Milton Dye, who were not members of the Union. Billy Carey spoke up that Scarborough should tell those employees to join the "f—" Union. Scarborough became angry and called Carey down because of his bad language in the presence of Scarborough's wife. Smith recalls Scarborough saying he had heard "about a walk out" and that Scarborough said "he could replace us by noon." Smith testified that Scarborough said, "he knew who the two instigators were." Reuben Smith spoke up during the meeting and asked Scarborough if he would sign a collective-bargaining contract. Smith recalled that Scarborough told employee Phillip Picard to go get the Union's proposed contract.

Billy Carey also attended Scarborough's second meeting. Carey recalls Scarborough complaining about Robert Andrews' pension and that Scarborough remarked that he knew who the two agitators were. Carey testified that he spoke up regarding Andrews' pension to the effect that Andrews would get the pension if he was in the Union. Carey also recalled that Scarborough told the employees "he would blow the whistle and send [the employees] down the road, he done got [sic] all the money out of the place he wanted."

Respondent's witness, Robert Andrews, testified that Scarborough called the employees to the meeting near the Coke machine after "there was talk about strike." Andrews recalled Scarborough telling the employees "to just go ahead and hit the clock now, because he had a truck to get out, and he couldn't make the payroll without getting the truck out." Andrews recalls someone, perhaps Billy Carey, told Scarborough to sign a contract and Scarborough told Phillip Picard to go get the contract and he would sign it. Respondent also called Foreman William Waters and employee Jackie Stowe who testified substantially in accord with Andrews regarding the meeting at the Coke machine.

Conclusion

The General Counsel alleges that Respondent violated the Act by threatening to close its facility and threatening that he would not bargain with the Union. The above evidence clearly demonstrates Scarborough's agitation over the employees' threats to strike. However, the various recollections of Scarborough's statements fail to provide sufficient support for the General Counsel's allegations. Apparently Scarborough stressed to the employees that he would have no means available to pay their wages if they struck before unloading a particular truck. However, I am unable to determine from the rather confused testimony that Scarborough actually threatened to close the facility. Moreover, I find nothing which constitutes a threat not to bargain with the Union. Scarborough said that he would not bargain through the EGA. However, the record did not show that Respondent had an obligation to bargain through that employer association, in view of the confusion over whether the Union's bargaining request was timely. Therefore, I find that the General Counsel failed to prove the 8(a)(1) allegations which allegedly occurred during the late July meeting.

III. AUGUST 1981

The complaint alleges that Respondent unlawfully laid off employees Reuben Smith and Billy Carey.[9] Both Smith and Carey were laid off on August 12, 1981, according to Joe Scarborough.

Reuben Smith was hired in March 1981. Smith was a "Top Polisher," and his job involved polishing the ends and tops of dies.

Both Smith and Billy Carey testified that Smith spoke out in the first of Scarborough's meetings regarding the Union. (See sec. C, above.) Smith recalled that he told Scarborough during that meeting that Scarborough should go along with what "the Union and the [Elberton Granite Association] came up with."

Scarborough admitted that Smith spoke out during the second meeting held near the Coke machine, in late July. According to Scarborough's recollection, Smith was the employee that asked him if he was going to sign a contract with the Union. Smith recalled asking Scarborough, "if I brought the contract to him, would he sign it?"

Carey testified that he spoke out during the late July meeting near the Coke machine. Carey mentioned that Robert Andrews would not lose his pension if he was in the Union. Scarborough admitted that Carey spoke twice during the second meeting. Scarborough testified that Carey used foul language in mentioning that Robert Andrews should join the Union. Later Carey told him that

[9] Apparently, from a reading of the complete record, the layoff of Smith and Carey preceded a more extensive layoff later in 1981.

"if I wanted them to go back to work, why didn't I sign the 'f—' contract."

Contrary to the testimony of Carey and Smith, which I credit, Scarborough denied stating in the late July meeting anything to the effect that he knew who the two instigators were. However, the evidence is unrebutted that Smith and Carey discussed a possible strike against Respondent shortly before that meeting. Respondent witness Dwight Driver admitted that he told Scarborough the employees were talking about striking. Driver admitted that he heard Billy Carey and James Eaves talk about striking. Later, before the second meeting called by Scarborough, Driver overheard Billy Carey again discuss a possible strike.

Reuben Smith testified that, following the second meeting with Scarborough, he and Billy Carey were discussing Scarborough's comments about not being able to take pension funds out on Robert Andrews and Milton Dye, when Scarborough walked in and told Foreman Talmadge Bone to send them home if they "were going to hold a union meeting in the shed."

On the day before his layoff Smith asked recently employed Ronnie Scales if Scales was a member of the Union. Subsequently, after talking to Scales, Scarborough told Smith "not only is he not in the Union, I got three more coming . . . . that's not in the Union."

I credit Smith's testimony regarding the two incidents mentioned immediately above.

In defense of the allegations, Scarborough testified that he laid off Reuben Smith after Smith refused to run the contour machine. According to Scarborough, there was no work for a "Top Polisher" unless someone ran the contour machine. Scarborough testified that when Smith refused there was no one else that could run the machine.

As indicated above, I do not credit Scarborough's testimony to the extent it conflicts with credited evidence. Moreover, on the basis of my observation of his demeanor, I do not credit the testimony of Dwight Driver who testified he told Scarborough the employees were discussing striking but denied naming those employees. Driver allegedly overheard Scarborough ask Reuben Smith to run the contour machine. Driver demonstrated a desire during his testimony to defend Respondent on every issue that arose during his testimony. In view of his strong interest in helping Respondent, I find it incredible that he knew but did not identify to Scarborough, those employees that were discussing a strike.

I credit Reuben Smith's testimony that he was not asked to run the contour machine. That testimony plus the admissions of Joe Scarborough and Dwight Driver that other employees, including Harvey Sims[10] and Foreman Billy Waters, could run the contour machine convinces me that Respondent's asserted basis for the layoff of Reuben Smith was pretextual. In view of the above evidence showing Smith's vocal support for the Union and possible strike activity shortly before his layoff, along with Scarborough's strong opposition to those positions, I am convinced and find that Smith was laid off because of his protected activities.

As to Billy Carey, Joe Scarborough testified regarding a statement of position submitted to the Regional Office on behalf of Respondent by its former attorney. According to that statement, which Scarborough testified was correct, "Billy Carey was not discharged from the Company, he was laid off, temporarily, due to lack of work. I simply cannot control the flow of orders that the company receives."

However, at the hearing Scarborough testified that Carey was not laid off because of lack of orders, but because Respondent received a run of poor monument granite.

At the time of his layoff Billy Carey was one of five stone cutters employed by Respondent. Respondent's records showed that with the exception of Robert Andrews, Carey, who was hired on February 4, 1979, was the most senior stone cutter. According to Scarborough, he selected Carey first for layoff because Carey was not a competent stone cutter. Scarborough testified:

> [H]e can't cut stone.
>
> * * * * *
>
> [H]e couldn't use an air machine; he couldn't cut raised letters; he couldn't cut lambs on top of monuments; he couldn't do any tedious work, he was just a pitch man; he's not even—I don't even think he pulled his apprenticeship.

Nevertheless, Scarborough admitted that Carey was never warned or disciplined about his job performance.

Two of the five stone cutters were hired shortly before Carey's August 12, 1981, layoff. Phillip Picard was hired on June 26, 1981, and Tommy Johnson was hired on July 20, 1981.

According to the testimony of Billy Carey, there were plenty of granite slabs available for cutting at the time of his layoff.

I find that the record evidence failed to support Respondent's asserted basis for the two layoffs on August 12, 1981. Moreover, the record clearly established that Respondent's asserted ground for selecting Billy Carey was unfounded. It is inconceivable that any employer would continue to work anyone who was as incompetent as Scarborough alleged Carey to be, for over 2-1/2 years without discharge or discipline. I am convinced that Respondent's asserted basis for Carey's layoff was pretextual.

The record reveals, and I find, that Respondent was motivated to lay off Carey because of his strong prounion position as expressed in his talk of striking before both of Scarborough's meetings and his strong statements during the second of those meetings. The strike talk by Carey and others was the factor that precipitated those meetings.

As to Carey's statements in the second meeting, I note that, although he used strong language which Joe Scarborough found offensive, I need not, and do not, find

[10] Joe Scarborough testified that Harvey Sims ran the contour machine until the Union demanded his removal from that job. However, Respondent did not offer any explanation as to why Sims could not return to the contour machine in view of the alleged absence of any other contour machine operator.

this to be a matter of concern in this inquiry since there was no contention by Respondent that Carey's strong language was considered as a factor in his layoff.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Granite Cutters Division, Local 221, Tile, Marble, Terrazzo, Finishers and Shopmen International Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees about their position in contract negotiations, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging its employee James Eaves on July 3, 1981, and thereafter failing and refusing and continuing to fail and refuse to reinstate Eaves, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. By laying off its employees Billy Carey and Reuben Smith on August 12, 1981, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

6. Respondent did not otherwise engage in unfair labor practices as alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As I have found that Respondent unlawfully terminated employees James Eaves, Billy Carey, and Reuben Smith, I shall recommend that Respondent be ordered to offer those employees immediate and full reinstatement to their former jobs or, if any of those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.[11] I shall further recommend that Respondent be ordered to make whole Eaves, Carey, and Smith for any loss of earnings they may have suffered as a result of the discrimination against them. Backpay may be computed with interest as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 650 (1977).[12]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[13]

The Respondent, Ponderosa Granite Company, Elberton, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by interrogating its employees concerning the employees' position in contract negotiations.

(b) Laying off and thereafter refusing to reinstate its employees because of its employees' union and protected activities.

(c) Discharging and thereafter refusing to reinstate its employees because of their collective-bargaining activities.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to James Eaves, Billy Carey, and Reuben Smith to their former positions or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Make James Eaves, Billy Carey, and Reuben Smith whole for any loss of pay they may have suffered as a result of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Expunge from their files any reference to the layoffs or discharge of James Eaves, Billy Carey, and Reuben Smith and notify each in writing that this has been done and that the evidence of their unlawful termination will not be used as a basis for future personnel action against them.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records, and all other reports necessary to analyze the amount of backpay due under the terms of this recommended Order.

(e) Post at its Elberton, Georgia, facility copies of the attached notice marked "Appendix."[14] Copies of said notice on forms to be provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be

[11] As to Carey and Smith, Respondent offered evidence that both have declined offers of reinstatement. Of course, that may affect the remedy herein. However, since the record was not fully developed on those questions, I cannot, at this stage, determine what if any effect those offers and refusals should receive. Those matters may be resolved, if necessary, in compliance proceedings.

[12] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply therewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees regarding their positions in contract negotiations.

WE WILL NOT discharge, layoff, or refuse to reinstate our employees because of their collective-bargaining activities, union activities, or other protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL offer immediate and full reinstatement to James Eaves, Billy Carey, and Rueben Smith to their former positions or, if their positions no longer exist, to a substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make James Eaves, Billy Carey, and Reuben Smith whole for any loss of earnings they may have suffered by reason of our discrimination against them with interest.

WE WILL expunge from our records any reference to the layoff of Bill Carey and Reuben Smith and to the discharge of James Eaves and WE WILL notify them in writing of our action in that regard.

PONDEROSA GRANITE COMPANY